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**TITLE 327 WATER POLLUTION CONTROL DIVISION**

**Proposed Rule**  
LSA Document #13-245

**DIGEST**

Adds [327 IAC 20](#) concerning satellite manure storage structures. Effective 30 days after filing with the Publisher.

**HISTORY**

First Notice of Comment Period: June 26, 2013, Indiana Register (DIN: [20130626-IR-327130245FNA](#)).  
Second Notice of Comment Period: April 9, 2014, Indiana Register (DIN: [20140409-IR-327130245SNA](#)).  
Notice of First Hearing: April 9, 2014, Indiana Register (DIN: [20140409-IR-327130245PHA](#)).  
Change in Notice of First Hearing: May 21, 2014, Indiana Register (DIN: [20140521-IR-327130245CHA](#)).  
Date of First Hearing: September 10, 2014.

**PUBLIC COMMENTS UNDER [IC 13-14-9-4.5](#)**

[IC 13-14-9-4.5](#) states that a board may not adopt a rule under [IC 13-14-9](#) that is substantively different from the draft rule published under [IC 13-14-9-4](#), until the board has conducted a third comment period that is at least 21 days long.

**REQUEST FOR PUBLIC COMMENTS**

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on April 9, 2014 at DIN: [20140409-IR-327130245SNA](#). The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

The proposed rule contains numerous changes from the draft rule that make the proposed rule so substantively different from the draft rule that public comment on the entire proposed rule is advisable. This notice requests the submission of comments on the entire proposed rule, including suggestions for specific amendments. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under [IC 13-14-9-6](#). Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #13-245 Satellite Manure Storage Structures  
Lauren Aguilar  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

(2) By facsimile to (317) 232-8992. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 233-8903.

(3) By electronic mail to [laguilar@idem.in.gov](mailto:laguilar@idem.in.gov). To confirm timely delivery of your comments, please request a document receipt when you send the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking you are commenting on.

**COMMENT PERIOD DEADLINE**

All comments must be postmarked, faxed, or time stamped not later than May 20, 2015. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Lauren Aguilar, Rules Development Branch, Office of Legal Counsel, (317) 234-8559 or (800) 451-6027 (in Indiana).

**SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

IDEM requested public comment from April 9, 2014, through May 9, 2014, on IDEM's draft rule language. IDEM received comments from the following parties:

Marita Fields (MF)

Bowden Quinn, Sierra Club Hoosier Chapter (SCHC)

E. Daniel Cox (EDC)

Kim Ferraro, Hoosier Environmental Council, Bowden Quinn, Sierra Club Hoosier Chapter, and Dave Menzer, Citizens Action Coalition Education Fund (HEC)

Barbara Sha Cox (BSC)

Justin T. Schneider, Indiana Farm Bureau, Joshua D. Trenary, Indiana Pork Advocacy Coalition, and Andy Tauer, Indiana Soybean Alliance and Indiana Corn Growers Association (IFB)

Elizabeth Mahoney, EM Design (EM)

Leslie Patterson (LP)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* The citizens of our State need to be protected from any possibility of economic or recreational destruction as in the devastation at Grand Lake in St. Mary's, Ohio. I have read that their officials are encouraging the export of animal manure to neighboring states. I am happy to see that we have realized the seriousness of this potential problem. (MF)

*Response:* IDEM cannot speculate on what Ohio officials may or may not be encouraging. IDEM has drafted rule language for the construction, operation and maintenance of a satellite manure storage structure (SMSS) at the direction of the Indiana General Assembly to comport with [IC 13-18-10.5](#). IDEM believes that the draft rule protects human health and the environment from threats to water quality.

*Comment:* Because satellite storage structures may be located in remote areas not subject to daily or even weekly observation, the rules controlling their operation should be more stringent than those for similar structures on confined feeding operations. (SCHC)

*Response:* IDEM believes that the manure storage requirements in the existing confined feeding operations (CFO) and concentrated animal feeding operations (CAFO) rules are protective of Indiana's environment and does not think that more stringent measures are necessary, except in individual cases based on the siting of a SMSS or other circumstances related to the individual SMSS.

*Comment:* The commenter believes that the definition of manure in [327 IAC 19-2-25](#), which has been incorporated in the draft rule language, is broad. The rules should be stricter than what is proposed in the draft rule language to better achieve the purpose of protecting human health and the environment from threats to water quality. The commenter believes manure is more dangerous than human waste and therefore, should be regulated similarly to human waste or more stringently. (HEC)

*Response:* Manure is defined by Indiana statute at [IC 13-11-2-126.5](#). That definition informs the extent of IDEM's regulatory power related to regulation of manure storage and handling. That definition is incorporated in the CAFO and CFO rules and is the definition IDEM must use related to the regulation of a SMSS. A SMSS serves the same function as a manure storage structure at a CAFO and CFO. IDEM believes that the manure storage requirements in the existing CFO and CAFO rules are protective of Indiana's environment and does not think that more stringent measures are necessary, except in individual cases based on the siting of a SMSS, or other circumstances related to the individual SMSS.

*Comment:* They should be located at least one mile from residential homes, schools, hospitals and nursing home property lines or our water sources. (MF) A SMSS should only be permitted within 500 feet of the owner or operator's personal residence. (EDC) A SMSS must be no less than 4 miles from any other public water supply, well or surface intake structure, surface water, ground water, drainage inlets, sink holes, flood plain, water wells, other residences and public buildings, or other residentially zoned districts and municipalities. (EDC)

*Response:* The proposed setbacks are equivalent to those provided for other manure containment structures in both the CFO and CAFO regulations. IDEM believes these setbacks are protective of Indiana's water resources and human health.

*Comment:* Setbacks are not adequate to protect the environment and public health. Environmental and public health issues should be the key concern. (BSC, EM, LP) The proposed setbacks in [327 IAC 20-5-1\(d\)](#) are not adequate to protect public health and the environment from spills, leaks and run-off of manure from SMSSs. Even with a storage capacity to accommodate expected precipitation, several days of rain can compromise a manure storage structure because steady rainfall weakens berms and prevents the excess wastewater from being sprayed on already saturated fields. (HEC)

*Response:* Each person building a SMSS is required to take into consideration storm events and the containment thereof when designing the SMSS and is required to build storm containment for any stormwater that is contaminated by manure. Further, the owner is required to maintain the structure to assure that the structure remains sound and properly contains the stored manure. This regulation does not deal with land application of the stored manure. The regulation is focused on the proper design and maintenance of a SMSS.

*Comment:* The draft rule at [327 IAC 20-5-1\(e\)](#) should be amended to require that any waiver of setbacks from residences or property lines by adjoining property owners be recorded as a notation on the deed to the property on which the SMSS is located, or on some other instrument that is normally examined during title search as required by [327 IAC 6.1-8-3\(c\)](#). (HEC)

*Response:* A deed restriction on the property containing a SMSS does not provide any information for potential purchasers of property from which a waiver has been obtained because the information would not be on the deed of that property. It is therefore unclear how requiring such a restriction would provide information of any value to potential purchasers of properties adjoining the SMSS property. Nothing in this rule prevents such a deed notation from being entered on the deed of the property containing the SMSS.

*Comment:* The draft rule in [327 IAC 20-5-2\(a\)](#) proposes to allow SMSS lagoons to dangerously sit a mere two (2) feet above bedrock and the "seasonable high water table." In stark contrast, human waste lagoons must be a minimum distance of ten (10) feet above bedrock and four (4) feet above the water table unless it can be demonstrated that the water table has been artificially lowered to four (4) feet or more from the bottom of the lagoon. There is simply no reason for this disparity and the final SMSS rule should impose a similar requirement. (HEC)

*Response:* The waste lagoons associated with waste water treatment plants merit a higher degree of protection as these waste streams are mixed streams that also include industrial wastes. The cited rules reflect the recommended ten-state standards for such facilities. The proposed rule for SMSSs is consistent with the requirements for animal waste storage found in the existing state CFO and CAFO regulations, which are consistent with Natural Resource Conservation Service (NRCS) recommendations.

*Comment:* The final SMSS rule should prohibit the storage of vast quantities of liquid manure in unlined, earthen lagoons. At minimum, mirror those that apply to lagoons used to store human waste set forth in [327 IAC 6.1-8-6](#). To prevent damage to SMSS lagoon liners, and prevent stormwater intrusion and runoff, the requirements of [327 IAC 6.1-8-6\(6\)-\(8\)](#) should be incorporated into the SMSS rule. (HEC)

*Response:* Earthen structures are allowed under the draft rules only when they are constructed and maintained in accordance with design requirements spelled out in the rule. Construction may not be in certain soil types without an approved liner. The storage of manure in a SMSS is based on requirements currently found in Indiana's CFO and CAFO regulations which have the same types of storage structures. Construction standards for a SMSS mirror those requirements.

*Comment:* Manure should not be stored in karst areas or in floodplains because of the heightened risk of water pollution in these areas due to extreme precipitation events, which the recently released Third U.S. National Climate Assessment finds are becoming more frequent, or other causes of structural failure. Therefore, the exceptions to the prohibition of construction of SMSS in these areas provided in [327 IAC 20-5-1\(b\)](#) and (c) should be removed. (SCHC)

*Comment:* Regarding [327 IAC 20-5-1](#), a SMSS should NEVER be located in karst terrain or in a 100 year flood plain. This determination should not be made by any IDEM Commissioner, it should be stated without any provisions or chance for waiver. (BSC)

*Comment:* Draft rule provisions [327 IAC 20-5-1\(a\)\(c\)](#) allow construction of SMSSs in karst terrain, one hundred year flood plains, and in soil types expected to have a seasonal high water table. The commenter is concerned that private well users will experience groundwater contamination if a SMSS is constructed in karst areas, flood plains and in sandy soils, and spills, leaks, and overflows occur. The commenter urges that the draft rule strictly prohibit construction of SMSSs in these areas. (HEC)

*Response:* While the rule does not prohibit locating of a SMSS in karst terrain or within a 100 year flood plain specifically, the rule requires that additional characterization of the potential site must be completed, including information on the seasonal high water table and design and construction specifications that assure adequate structural integrity and environmental protection prior to IDEM allowing the siting of a SMSS in such an area. If the commissioner deems the plans inadequate to protect human health or the environment, he may deny the construction of the SMSS. The commissioner may also require additional information prior to allowing the use of such a site if there is any question as to whether the SMSS will be sited and constructed to assure environmental protection.

*Comment:* If storage facilities are allowed to be located in karst areas, the setback from sinkholes should be measured from the perimeter of the sinkhole, not from the "surficial opening or lowest point of the feature," as stated in [327 IAC 20-5-1\(d\)\(2\)\(C\)](#). (SCHC)

*Response:* Proposed setback distances are the same as those found in the CFO and CAFO regulations. IDEM believes this is protective of waters of the state and human health.

*Comment:* A financial assurance package should be included with application. (BSC, LP)

*Comment:* Owner of SMSS should be required to be responsible for any damage caused by rerouting of drainage. (BSC)

*Comment:* I happen to know that some of the farm businesses do go bankrupt and leave without making arrangements to clean up their messes. It is not fair for the County taxpayers to pay for the clean-up. This should be addressed. Also, if a property is transferred, who is the obligated party? (MF)

*Response:* Currently, IDEM does not have the authority to require financial assurance from owners and operators of SMSS operations. Any person who is permitted to operate a SMSS is liable for the environmental damage that occurs from that operation during the term of the permit. Upon transfer of the property, responsibility for ongoing environmental harm rests with the property owner. The draft rule does contemplate a change in

ownership of a SMSS and allows for the transfer of the existing permit if done in accordance with the draft rules. IDEM regulation cannot infringe on private property or contract rights. However, IDEM does have the authority to investigate and order the cleanup of environmental contamination regardless of whether the activity causing the environmental harm is the subject of a permit. A permit does not give any person license to cause damage to another person's property.

*Comment:* The requirements for solid manure storage structures contained in [327 IAC 20-5-4](#) are inadequate to protect the environment from contamination. All such structures should have roofs that prevent rainwater from contacting the manure. Stormwater controls, as allowed by [327 IAC 20-5-4\(1\)\(b\)](#), cannot be relied upon to prevent the manure from overflowing in extreme rain events. (SCHC)

*Response:* Structures containing solid manure are required to be covered to prevent rainwater from coming into contact with the solid manure or contain any rainwater that comes into contact with the manure. Any stormwater that comes into contact with the manure being stored must be contained. All structures containing liquid manure are required to maintain a minimum of 2 feet of freeboard, as is required for all other regulated manure containment structures under the state CFO and CAFO regulations. Additionally, each SMSS must maintain an emergency response plan that includes a plan to address overflows of manure in extreme rain events and spills that eventually reach waters of the state. Each operation is required to maintain the emergency plan, as well as document any responses to manure releases or spills in accordance with the draft rules.

*Comment:* Regarding [327 IAC 20-5-4](#), all solid manure structures should have concrete floors. (BSC, EM, SCHC)

*Comment:* All solid manure structures should potentially have concrete sides. (EM)

*Comment:* Given the likelihood that heavy equipment could be used to remove the manure for transport to another location, the liners allowed by [327 IAC 20-5-4\(2\)](#) would be susceptible to damage, allowing the manure to contaminate the soil and groundwater beneath them. (SCHC)

*Response:* The draft rule requires that manure structures containing solid manure be constructed in accordance with the NRCS construction standards being incorporated into the rule. These standards include liner requirements when constructing in certain soil types. The rule requires that the integrity of the structure be maintained at all times to prevent environmental impacts. Damage to either the structure or the liner that causes any type of discharge would violate the permit and require corrective action.

*Comment:* Regarding [327 IAC 20-5-5](#), free board should be at least 3 ft. (BSC, EM)

*Comment:* Allowing liquid manure storage structures to maintain only two feet of freeboard [[327 IAC 20-5-5\(b\)](#) and [20-6-1\(c\)\(1\)](#)] is inadequate given the possibility that these structures could be in remote locations and the increased frequency of heavy rain events. The freeboard should be at least three feet in these structures. (SCHC)

*Response:* The 2 feet of freeboard requirement is consistent with how manure storage structures are regulated under Indiana's CFO and CAFO programs. IDEM believes that the requirement to continually maintain a 2 foot freeboard is protective of the environment.

*Comment:* The provision at [327 IAC 20-3-1\(2\)](#) should read "to prevent leaks and seepage" not simply minimize as this is too abstract. (EM)

*Response:* No structure can completely prevent all leaks and seepage. Even concrete and liner standards allow for a certain extremely minor amount of seepage given the nature of the material used. The amount of seepage allowed is specified in the rule and is not, therefore, abstract.

*Comment:* IDEM should be required to inspect during construction. (BSC)

*Comment:* There should be IDEM inspections that are defined by the rules, done by IDEM employees, and done on a regular basis. (MF)

*Comment:* Regarding [327 IAC 20-3-2\(5\)](#), inspections by IDEM should be included on set times 6 months to 2 years etc. and they should be mandatory, not just if IDEM has the manpower to do so! (EM)

*Comment:* Regarding, [327 IAC 20-5-7](#), IDEM should inspect prior to any operation of SMSS. (BSC, EM, LP)

*Response:* IDEM requires 2 days notice prior to construction being started to allow time for inspection, if necessary. Also, IDEM may inspect a facility at any time during construction or operation of a facility. The number of staff required to inspect all regulated entities in Indiana makes it infeasible for IDEM to require inspection at specific times or meet a specified number of annual inspections for all regulated entities.

*Comment:* Regarding [327 IAC 20-7-1](#) and [327 IAC 20-7-2](#), IDEM should inspect a SMSS being removed from the program. (BSC, EM, LP)

*Response:* [327 IAC 20-7-3\(c\)](#) requires the commissioner of IDEM to send a letter verifying that the permit holder has met the requirements for decommissioning and exiting the program.

*Comment:* If there are any violations, IDEM should not allow operation until violations are addressed and then inspected again. The county building inspector should be notified and included in review. (BSC, LP)

*Response:* Not all violations require the stoppage of an operation. In this case, the operation is primarily the storage of manure. If there are violations that indicate the storage structure is not built or maintained in a manner to ensure environmental protection, IDEM will use its authority to ensure that the issue is resolved and any inadequacies are addressed.



*Comment:* Regarding [327 IAC 20-5-5](#), the owner should be required to send to IDEM an inspection report on a routine basis. (BSC, LP)

*Response:* The draft rule requires monthly inspections of the structures, as well as documentation of all maintenance and emergency response activities. IDEM staff has access to that information when visiting the site. Sending IDEM inspection reports does little to ensure the operations are being operated and maintained in an environmentally sound manner.

*Comment:* Regarding [327 IAC 20-7-2](#), subsection (c) shall read "shall" instead of "may". (BSC, EM, LP)

*Response:* The commissioner maintains discretionary authority to require additional information be submitted, as well as additional decommissioning activities be performed, if there is evidence of environmental contamination as a result of the permitted activities.

*Comment:* Regarding [327 IAC 20-3-2](#)(c), "may" should be "shall" as should be the clear responsibility of the Commissioner. (EM)

*Response:* The Commissioner has the somewhat broad authority to secure compliance with Title 13 of the Indiana Code. As such, the commissioner "may" require additional information be submitted or additional activities be undertaken to correct an environmental issue. However, each program is also governed by specific statutory authorities. The role of the regulation is to spell out the requirements that an applicant must meet to obtain and maintain a permit for a specific activity. Because each situation may involve fact-specific and site-specific circumstances, providing the Commissioner with the ability to require additional information or activities as befits a specific situation is in keeping with the general authority to protect human health and the environment, as well as the specific statutory limitations within which IDEM's regulatory programs operate.

*Comment:* The terms owner/operator is vague. It is unclear who will be held responsible in case of spills etc. Clarification of the responsible party should be defined. (BSC, LP)

*Response:* The person who seeks and holds a permit to operate a SMSS is ultimately responsible for maintaining the operation within the requirements of the rules and the permit. Because certain land owners may contract with an operator to construct and run a SMSS, the permit holder would likely be the operator in that circumstance. Ultimately, a property owner is liable for environmental harm caused by activities on land he or she owns if no other responsible party is available. However, if an operator holds the permit for a SMSS that is either constructed or maintained improperly, resulting in environmental damage, that permit holder will be held responsible to take corrective action.

*Comment:* Any violation in Indiana or out of state would and should be a reason for denying the application. (BSC, LP)

*Response:* The "good character" requirements found at [IC 13-18-10](#) for confined feeding operations do not apply to SMSS owners and operators. The SMSS permit program is governed by the provisions of [IC 13-15](#).

*Comment:* Regarding [327 IAC 20-4-3](#)(c) and [327 IAC 20-4-3](#)(c), an incomplete application shall be denied, not may. (BSC, EM, LP)

*Response:* In certain cases, the nature of the incomplete application may be so minor that denial is not necessary. In other cases, the application may be so devoid of information that even after repeated attempts to obtain complete information, the department has no choice but to deny the application. The language in the draft rule mirrors the statutory language found at [IC 13-15-4-9](#) which is the statute that governs how and when the Commissioner may deny an incomplete application. The SMSS permit program is governed by the provisions of [IC 13-15](#).

*Comment:* Regarding [327 IAC 20-4-2](#), the permit should be for a maximum of 5 years and renewed only after IDEM inspections. (BSC, EM, LP)

*Comment:* Permits should preferably be less than 5 years. (EM)

*Response:* An initial permit issued under [IC 13-15](#) may be issued for up to five years. Under [IC 13-15-3-2](#), an activity of a continuing nature, which the storage of manure is, may be renewed for up to ten years.

*Comment:* Regarding [327 IAC 20-6-2](#), records should be sent to IDEM on specified dates and include the volume of manure and the farm where it originated. (BSC, EM, LP)

*Comment:* All records that SMSSs' owners/operators are required to maintain to document compliance should be submitted to IDEM instead of being maintained by the owner/operator. Requiring the SMSS's owner/operator to "maintain an operating record" does not ensure that IDEM will have access to the information, much less impacted citizens who should have access to these records as well. (HEC)

*Response:* IDEM has access to all information in the operating record upon entering any SMSS site. The maintenance of an operating record on-site mirrors requirements for monitoring manure storage and handling requirements at state regulated CFO facilities. Maintaining extensive records on volume and origin is not a necessary component of maintaining an environmentally sound storage structure. This regulation does not set land application standards nor manure testing standards, where requirements for sampling to assure proper nutrient application and uptake on the fields upon which it is to be land applied are more appropriate.

*Comment:* In the operating record section at [327 IAC 20-6-2](#)(8), a number of years for the retention of this documentation should be included. We recommend "within the permit term" similar to the language in [327 IAC 20-6-2](#)(7). (IFB)

*Response:* IDEM agrees that clarification as to the amount of time documents must be kept as part of the operating record would be beneficial. Certain documents may appropriately be kept for only the duration of the current permit term. However, other documents including the site plan, registered professional engineer (RPE) certification, construction notarizations and documented maintenance activities may very well be necessary to be maintained beyond the current permit term. IDEM has amended the draft rules to clarify time frames for document retention.

*Comment:* At [327 IAC 20-1-2\(a\)](#) and [327 IAC 20-2-3](#), the definition of "Satellite Manure Storage Structure" should be a reference to the statutory definition at [IC 13-11-2-196.2](#). While the definition proposed at [327 IAC 20-2-3](#) is identical to the statutory definition currently, a reference to the statutory definition will ensure that the definition stays consistent in the event the rule or the statute is modified in the future. (IFB)

*Response:* IDEM agrees that simply referencing the statutory definition would mean that the rule would always be consistent with the statute. The statutory definition was spelled out in the draft rule for ease of comprehension for all interested parties. IDEM has referenced the statutory definition since both are identical.

*Comment:* The term "manure containment capacity" is not defined but is used in [327 IAC 20-1-2\(b\)\(2\)](#). We believe that this term is best defined as an increase in the size of the storage structure so that the maximum capacity is increased regardless of how much volume of manure is currently being stored in the structure. (IFB)

*Comment:* The term "associated structures" used at [12-1-2\(c\)\(2\)](#) is not defined. It is necessary that individuals understand which structures should be included as "associated structures" for the purpose of determining volume. We suggest that this information be clarified through addition of a definition in the rule, more explanation in [327 IAC 20-1-2\(c\)\(2\)](#), or through non-rule policy. The clarification should address how the determination will be made if an item is an "associated structure" and the scope of geographical area which will be included. (IFB)

*Response:* IDEM has removed reference to "manure containment capacity" as well as "associated structures" and has revised the rule language to clarify that any component of the SMSS is considered part of the SMSS in accordance with the governing statutes.

*Comment:* The terms "manure release" and "spill" are both used in [327 IAC 20-3-1](#) and then periodically throughout the document. The term "spill" is unnecessary. A "spill" is defined at [327 IAC 2-6.1-4\(15\)](#) and refers to leakage, discharge, etc. of petroleum, hazardous substances, extremely hazardous substances, or objectionable substances. A "manure release" is defined at [327 IAC 19-2-27](#) as leakage, discharge, etc. of manure outside of an approved waste management system. The concern with a SMSS would be a manure release. We are only dealing with manure from a manure storage structure. That approach should be taken throughout the rule. (IFB)

*Response:* A "spill" as defined at [327 IAC 2-6.1-4\(15\)](#) applies to any substance listed, including petroleum, hazardous substances and "objectionable substances". Objectionable substances include substances that are of a quantity and a type, and present for a duration and in a location so as to damage waters of the state ([327 IAC 2-6.1-4\(11\)](#)). The draft rule attempts to draw a distinction between a manure release and a spill in that many manure releases are in the proximity of the storage structure, which may be more easily contained and cleaned up. Whereas, a spill is usually considered an event that causes a threat to waters of the state should the substance reach waters of the state. While a small amount of manure may not be an "objectionable substance" as that term is defined for purposes of the spill rule, it still must be contained and cleaned up under this rule. In addition, in a sufficient amount, manure can be considered an "objectionable substance" should its release enter or threaten to enter a water of the state. The concept embodied in the spill rule is contained in the requirement for an emergency response plan which mirrors spill rule requirements. The spill rule has broad applicability and does apply to sources regulated under this rule. However, compliance with the requirements of the emergency response plan section at [327 IAC 20-6-3](#) would meet spill rule requirements.

*Comment:* The requirement to document compliance with all state and local zoning laws is mentioned at [327 IAC 20-4-1\(b\)\(8\)](#). That provision is outside the scope of this rulemaking. This provision should be removed. The applicant and the county should deal with the zoning issues as a separate matter. (IFB)

*Response:* [IC 13-15-3-5](#), the area of the Indiana Code that governs the issuance of SMSS permits, among other IDEM permits, requires that a permit may be issued only after the department has approved the plans and specifications and determined that the facility meets the requirements of the rule. Further, the statute states that a person may not start construction until the person has obtained any approval required by any county, city or town in which the facility is located. IDEM, by requiring documentation of compliance with local zoning laws within the rule, is assuring the local approval has been obtained prior to the issuance of a construction permit. IDEM maintains this authority under [IC 13-15-2-1](#) and [IC 13-15-3-5](#). IDEM understands that certain local boards may require proof of IDEM approval prior to granting zoning approval and is willing to discuss ways to ensure that the applicant meets both IDEM application requirements and local zoning approval requirements when necessary.

*Comment:* Under the design requirements at [327 IAC 20-5-2\(a\)\(3\)\(B\)\(iii\)](#), there is no reference back to the provisions in [327 IAC 20-5-1\(b\)](#) for earthen structures in karst areas. We propose inserting the reference similar to how the CFO rule is structured. The once monthly inspection is reasonable. (IFB)

*Response:* IDEM agrees that a reference back to section 1 is necessary because construction of either a concrete or earthen structure in karst terrain is only allowed in very specific circumstances and spelling those out

as clearly as possible is a goal of the rule.

*Comment:* In our initial comments, we urged IDEM to draft a SMSS rule that addresses the likelihood that there will be multiple users of a particular SMSS who could escape accountability for spills and discharges in their use of the SMSS if not subject to all permit requirements. To that end, we urged IDEM to require the following information as part of the SMSS permit application process:

- X - phone number and mailing address of the owner/operator and each user of the SMSS;
- X - the past environmental compliance history of the applicant, owner/operator (if different from the applicant) and each user;
  - the physical location and GIS coordinates of the proposed SMSS;
- X - the amount and type of manure (i.e. swine, cattle, poultry) to be contained and identity of the generating source(s);
- X - the capacity of the land application area(s), if any, that will accommodate the structure's manure;
- X - all features of the SMSS for animal waste transfer and associated land application;
- X - all adjacent landowners and those within one (1) mile of the boundaries of the property on which the SMSS will be located;
  - a site plan which includes, at a minimum, locations of ditches and conveyances, surface waters, well heads, hydrologically sensitive and critical areas, a topographic map of the site including any steep slopes or highly erodible land, and all features for the management and containment of waste including buffers, filter strips, discharge locations, as well as a soils map for the SMSS and all associated land application areas;
- X - a waste storage and management plan (WSMP) that contains: structural engineering requirements including requirements for operation and maintenance, work practices, inspections, record-keeping and reporting, and exertion of due diligence that exceed the requirements of [327 IAC 19-7-5](#); and work practice and bright line compliance requirements for making land application decisions related to nutrient budgets, manure and soil testing, weather conditions, and runoff avoidance consistent with [327 IAC 19-3-1\(f\)](#) and [327 IAC 19-14](#);
- X - a mandatory groundwater monitoring plan consistent with the requirements of [327 IAC 19-10-1](#);
- X - a site-specific storm water management plan exceeding the requirements of [327 IAC 19-11-12](#);
  - an emergency response plan consistent with [327 IAC 19-13-4](#);
- X - a closure plan consistent with [327 IAC 19-15-2](#).

The items above marked with an X were not included in the draft rule but should be. (HEC)

*Response:* IDEM does not see the efficacy of requiring information be kept on each source of manure stored at the SMSS. Again, this rule is not about land application of the manure, rather it is about environmentally sound construction and maintenance of storage structures to ensure that the manure is properly contained. These facilities may sell the manure to custom applicators who remove the manure and land apply it for clients across the state. The individual nutrient requirements of each field upon which the manure is land applied is regulated by the Indiana Office of the State Chemist, as well as by Indiana's CFO rules for CFO operations that land apply manure that derives from the CFO. This program is not the CFO program, which operates under [IC 13-18](#), and the "good character" requirements under that program do not apply to persons wishing to construct a regulated SMSS, which operates under [IC 13-15](#). The construction requirements under this rule are almost identical to the requirements for manure storage structures at Indiana's regulated CFO and CAFOs, because a SMSS serves the same function as a manure storage structure at a CAFO and CFO. IDEM believes those standards are protective of Indiana's water resources. Additionally, permit holders are required to maintain the integrity of these structures at all times to remain in compliance with the permit and the rules.

*Comment:* IDEM drafted a rule that merely requires SMSS permit applicants to "make a reasonable effort to provide notice" to the county executive and landowners within 1/2 mile of the SMSS property. Aside from the fact that landowners within three miles of a SMSS could be impacted and should receive notice, without required notice to the public (i.e., newspaper notice and signage at the SMSS property prior to construction), the provision of a public comment period is meaningless. The public comment period is rendered meaningless in the draft rule by the fact that IDEM need only "accept" written comments but does not have to consider or respond to them. A concerned community might be able to air their concerns at an IDEM public meeting, but not a formal public hearing. The commenter urges mandatory public notice and commenting requirements similar to those required under the NPDES program. (HEC)

*Comment:* Regarding [327 IAC 20-4-5](#), if there are environmental concerns, a public meeting should be held. The decision should not be at the discretion of Commissioner. (BSC, LP)

*Response:* The public notice requirements in the draft rule mirror the statutory requirements found at [IC 13-18-10-5-3](#), which specifically addresses this issue. Notification requirements under [IC 13-15-8-2](#) for other types of IDEM permits only require notification to adjoining land owners as opposed to all landowners and occupants within one half mile of the SMSS facility. The public notice and hearing requirements mirror the statutory requirements found at [IC 13-15-5-1](#), which are the requirements under which this permit program operates.

*Comment:* No SMSS should have a discharge pipe allowing the release of contaminated water. The

commenter suggests that [327 IAC 20-5-2](#)(e) have an "or" separating clause (1) and (2) rather than an "and". (SCHC)

*Comment:* There is a drafting error at [327 IAC 20-4-5](#)(b)(3). The reference should be to subsection (c), not (e). (IFB)

*Response:* IDEM agrees and has made the changes suggested.

## **SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING**

On September 10, 2014, the Environmental Rules Board (board) conducted the first public hearing/board meeting concerning the development of new rules at [327 IAC 20](#).

Comments were made by the following parties:

Bowden Quinn, Sierra Club, Hoosier Chapter (SC)

Steve Peckingpaugh (SP)

Dave Menzer, Downstream Project (DM)

Josh Trenary, Indiana Pork Advocacy Coalition, Indiana Soybean Alliance, Indiana Corn Growers Association, Indiana Farm Bureau, and Indiana Dairy Producers (IPAC)

Kim Ferraro, Hoosier Environmental Council (HEC)

Charles Mitch (CM)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* The rule should have stronger restrictions than a manure storage structure that is on a operating farm. (SC)

*Comment:* The current proposed rule is inadequate. (SC, SP)

*Response:* IDEM believes the current proposed rule is protective of Indiana's waters and human health. However, IDEM remains open to considering changes to the rule based on input from the Environmental Rules Board and all interested parties.

*Comment:* The rule should contain good character requirements and financial responsibility requirements. (SC, SP, DM, HEC, CM)

*Response:* At the request of the Environmental Rules Board, IDEM has consulted with the Office of the Attorney General on this issue and that office has concurred with IDEM's opinion that specific statutory authority is necessary to include such requirements in the rule. In every other case where such requirements are included in Indiana's environmental regulations, there is specific statutory authority directing the inclusion of those requirements into the regulations.

*Comment:* The rule should contain a complete prohibition of construction of an SMSS in karst terrain, sandy soils, one hundred year flood plains, and any area where there is a seasonal high water table. (SC, SP, DM, HEC, CM)

*Response:* While the rule does not contain a complete prohibition to constructing in areas mentioned above, additional characterization of the area is required to ensure adequate protections are built into the design and construction before it may be approved by the commissioner. The commissioner retains the authority to require additional protections on a case-by-case basis as well.

*Comment:* Instead of the requirements for zoning compliance listed at [327 IAC 20-4-1](#)(b)(8), include a requirement that documentation of zoning compliance be submitted with the notice prior to construction required at [327 IAC 20-5-7](#). (IPAC)

*Response:* [IC 13-15-3-5](#) requires that construction may not begin until a person has obtained required approval by any county, city, or town in which the facility is located. IDEM understands that local ordinances may require prior approval from the state before granting local approval and in those cases some sort of conditional approval may be necessary. Therefore, requiring submittal of zoning compliance prior to the start of construction is an appropriate way to ensure compliance with the statutory prohibition against starting construction without proof of local approval. IDEM will look at amendments to the rules to clarify this point.

*Comment:* These structures are a positive improvement in the management of manure in an engineered and controlled system. It makes it harder to bring manure in and store it from out of state because it requires prior approval to build these structures. (IPAC)

*Response:* IDEM believes that SMSSs may be a benefit to some operations that do not always have adequate storage and due to circumstances such as weather conditions, may need a place to store manure in order to comply with existing CFO regulations or prevent a spill into Indiana's waters. Prior to the statutes requiring regulation of SMSSs, such structures could be built without any oversight so requiring the use of industry recognized design and construction standards is a far more environmentally sound approach.

*Comment:* Contrary to previous statements, these rules do not solely apply to structures being built for manure coming in from out of state. (IPAC)

*Response:* IDEM agrees that this rule is not directed at the importation of out of state waste and it is likely, given transportation costs, that most facilities will be used by in-state producers to assure that they are complying with storage requirements found in the CFO rules. Regardless of where the manure originates, the purpose of this rule is to assure that containment of all manure is done in an environmentally protective manner.



*Comment:* For consistency, IPAC urged IDEM to adopt standards that were identical to the CFO rule for construction of satellite manure storage structure, even though the risk for a satellite structure is less since there is no continuous flow of manure to these facilities. (IPAC)

*Response:* IDEM believes that the construction and design standards set forth in the CFO rules for similar structures are protective of Indiana's waters and are based on accepted industry standards, which is why IDEM has proposed them for SMSSs. While there may not be continuous flow of manure into such structures, it is also likely the case that there is less daily interaction with an SMSS than could be expected on a CFO, which is also a consideration in this rulemaking.

*Comment:* Public notice and public hearing should be held before construction of an SMSS. (SP)

*Comment:* Mandatory public notice and comment should be held for folks who would be impacted by an SMSS. (HEC)

*Response:* The notice requirements of this program are governed by the statutory requirements for public notice found at [IC 13-15-5](#) and [IC 13-18-10.5-3](#), which requires that an applicant must make a reasonable effort to provide notice within ten (10) working days of submitting an application to the county executive of the county where the SMSS is to be constructed or expanded and each owner and occupant of land that is within one-half mile or less of any part of the proposed footprint of the proposed structure.

*Comment:* There should be setback requirements of one thousand (1,000) feet from residential and public property lines. (SP)

*Response:* The proposed setbacks are the same as those found within the CFO regulations. IDEM believes these setbacks are protective of human health and the environment.

*Comment:* The board should consider the permitting specifics of the rule and take into account that there are multiple users of an SMSS, not just the owner or applicant. The board should require more information about those other users. (HEC)

*Response:* The function of this rule is to regulate the design, construction and operation of a manure storage structure. It is not to regulate the manure placed in the structure. Containment of the manure in a way that is protective of Indiana's environment is the goal of this rulemaking. The use of the manure is regulated depending on that use. Land application of manure, for example, is regulated by fertilizer application rules adopted by the Office of the State Chemist.

*Comment:* A SMSS containing liquid manure should be required to have three (3) feet of freeboard at all times. (SC)

*Response:* The freeboard requirement of two (2) feet is the same as is required for CFO containment structures. IDEM believes it is protective of the environment and more than adequate to contain even the most significant rain event.

*Comment:* A sinkhole should be measured from the top of the sinkhole, not the center of the sinkhole to determine the buffer zone needed between the sinkhole and an SMSS.

*Response:* Additional consideration is being given to where the setback distance should be measured. Staff are evaluating other states' requirements relative to this issue.

*Comment:* Manure testing should be required to establish proper agronomic rates of application. (CM)

*Response:* This rule does not address manure application. It addresses design, construction and operation of manure storage. Manure that is land applied must meet the requirements applicable to all fertilizer application under rules adopted by the Office of the State Chemist. These rules can be found at [355 IAC 8](#). Manure land applied on land owned or used by a CFO must meet the land application requirements for manure under the CFO rules. Both sets of rules require application at the proper agronomic rate.

*Comment:* Since the statute behind the rules for a SMSS is [IC 13-18-10.5](#), the sections of [IC 13-18-10](#) for the control of confined feeding operations should be considered appropriate statutory authority for this rulemaking. It is unclear why there should be weaker rules for a satellite manure storage structure system using [IC 13-15](#) as statutory authority than rules under authority from [IC 13-18-10](#). The board should resolve this mystery, either bring in [IC 13-18-10](#) or explain why it is not part of this rulemaking. (CM)

*Response:* Chapter 10.5 is a separate chapter of the Indiana Code and is not merely an extension of Chapter 10. The requirements contained in Chapter 10 are those that apply to confined feeding operations (CFO) as that term is defined at [IC 13-11-2-40](#). CFOs are operations that raise animals in confinement and the statutes pertaining to those operations have very specific requirements for regulation as set forth in Chapter 10. While satellite manure storage structures are structures that contain manure just as structures on CFOs do, the requirements for regulation and the authority to regulate are not the same. Had the legislature wanted the same requirements to apply to SMSSs as those that apply to CFOs, a separate chapter for SMSSs would not have been created. Because the legislature did not place SMSS regulation within Chapter 10, the requirements for all permitting programs under [IC 13-15-10](#) must apply, absent more specific language in Chapter 10.5. As is the case with all permitting programs within IDEM, the most specific statutory language applies; absent that, the general requirements for all permits issued are applicable. IDEM recognizes that the substance being regulated, manure, is the same as what is stored at CFOs. That is why IDEM proposed the same technical construction and setback standards for the storage of manure at SMSSs. These standards are accepted standards within the

## **327 IAC 20**

SECTION 1. [327 IAC 20](#) IS ADDED TO READ AS FOLLOWS:

### **ARTICLE 20. SATELLITE MANURE STORAGE STRUCTURE PERMITTING PROGRAM**

#### **Rule 1. General Provisions**

##### **327 IAC 20-1-1 General provisions**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2-196.2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18-10.5](#); [IC 13-30](#)

Sec. 1. (a) Under [IC 13-18-10.5](#), a person may not start the following activities regarding a SMSS, as defined in [IC 13-11-2-196.2](#), without obtaining the prior approval of the department:

- (1) Construction.
- (2) Expansion that increases manure containment capacity.

(b) The storage or manure containment capacity shall be determined by the greatest amount of manure the SMSS is able to hold after meeting the minimum standards of this article for:

- (1) secondary containment;
- (2) freeboard; and
- (3) headspace.

(c) If the owner or operator of a regulated CAFO or CFO deposits any manure from the owner or operator's CAFO or CFO into a storage structure also under the control of the owner or operator, the structure shall not be considered a SMSS. This action shall constitute an expansion of the owner or operator's CAFO or CFO operation.

(d) Storage, for purposes of this article, shall not include staging as defined in [327 IAC 19-2-43](#).

(*Water Pollution Control Division; [327 IAC 20-1-1](#)*)

##### **327 IAC 20-1-2 Appeal of decisions**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15-6](#); [IC 13-15-7](#); [IC 13-18](#); [IC 13-30](#)

Sec. 2. A decision by the commissioner to approve, deny, revoke, amend, require an approval, or impose additional requirements under this article is appealable under [IC 13-15-6](#) and [IC 13-15-7](#). Information on appeal rights shall be provided with the documentation of the commissioner's decision.

(*Water Pollution Control Division; [327 IAC 20-1-2](#)*).

#### **Rule 2. Definitions**

##### **327 IAC 20-2-1 Definitions**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 1. The definitions in [327 IAC 19-2](#) and the definitions in this rule apply throughout this article.

(*Water Pollution Control Division; [327 IAC 20-2-1](#)*)

**[327 IAC 20-2-2](#) "One hundred (100) year flood event" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 2. "One hundred (100) year flood event" means a flood of a magnitude equaled or exceeded, on the average, once in one hundred (100) years.

(Water Pollution Control Division; [327 IAC 20-2-2](#))

**[327 IAC 20-2-3](#) "Satellite manure storage structure" or "SMSS" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2-196.2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 3. "Satellite manure storage structure" or "SMSS" has the meaning set forth in [IC 13-11-2-196.2](#).

(Water Pollution Control Division; [327 IAC 20-2-3](#))

**Rule 3. Performance Standards and Permit Conditions**

**[327 IAC 20-3-1](#) Performance standards**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 1. A SMSS must be designed, constructed, maintained, and operated in a manner that:

(1) prevents:

- (A) runoff;
- (B) spills; or
- (C) manure releases;

(2) minimizes:

- (A) leaks; and
- (B) seepage; and

(3) manages stormwater to prevent discharge of stormwater contaminated by the contents of the SMSS to waters of the state.

(Water Pollution Control Division; [327 IAC 20-3-1](#))

**[327 IAC 20-3-2](#) Permit conditions**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 2. (a) The owner or operator of a SMSS must:

- (1) have a valid permit to operate; or
- (2) close in accordance with [327 IAC 20-7](#).

(b) The following conditions apply to all SMSS permits:

- (1) The owner or operator must comply with all terms and conditions of the permit and this article.
- (2) The owner or operator shall take all reasonable steps to prevent, minimize, or correct any adverse impact on the environment resulting from noncompliance with the permit or this article.
- (3) The filing by the owner or operator of a request for a permit modification, revocation with reissuance, or revocation without reissuance does not stay or suspend any permit term or condition.
- (4) The permit does not convey any property rights of any sort or any exclusive privilege.
- (5) The owner or operator shall allow the commissioner, or an authorized representative, including an authorized contractor acting as a representative of the commissioner, upon the presentation of credentials to:
  - (A) enter upon the SMSS premises or where any records must be kept under the terms and

conditions of the permit or this article;

(B) have access to review any records that must be kept under the terms and conditions of the permit or this article;

(C) inspect, at reasonable times:

(i) any SMSS; or

(ii) practices required or otherwise regulated under the permit or this article; and

(D) sample or monitor, at reasonable times, for the purpose of evaluating compliance with the permit or state and federal laws and regulations.

(6) The provisions of the permit are severable and, if any provision of the permit or the application of any provision of the permit to any circumstance is held invalid, the application of the provision to other circumstances and the remainder of the permit shall not be affected.

(c) If determined to be necessary to protect human health or the environment, the commissioner may require additional protective measures such as:

(1) alternate design standards;

(2) alternate operational requirements; or

(3) use of a registered professional engineer.

The commissioner shall provide written documentation describing the basis for the determination.

(d) The commissioner may incorporate conditions into the permit that require testing to verify that the SMSS is in compliance with the design and performance standards established in this article.

*(Water Pollution Control Division; [327 IAC 20-3-2](#))*

#### **Rule 4. Permit Application Requirements and Approval Process**

##### **[327 IAC 20-4-1](#) Initial application requirements**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15-4-9](#); [IC 13-18](#); [IC 13-30](#)

**Sec. 1. (a) An application under this article is required for a SMSS permit.**

(b) Three (3) copies of the application package, one (1) of which may be electronic, must be submitted to the commissioner in a format specified by the department and must include all of the following to be considered complete:

(1) Forms, as provided by the department, completed in accordance with the instructions provided on the forms.

(2) Plot maps of the location proposed for the SMSS, consisting of the following:

(A) A United States Department of Agriculture Natural Resources Conservation Service soil survey map\*.

(B) A United States Geological Survey topographical map\* that includes identification of any public water supply wells and public water supply surface intake structures within one thousand (1,000) feet of the SMSS.

(C) The maps must be legible and clearly show the:

(i) location of the SMSS; and

(ii) boundaries of the property on which the SMSS is to be located.

(3) A SMSS site plan that shows the following:

(A) Any of the following features present within five hundred (500) feet of the existing or proposed location of the SMSS:

(i) All existing and proposed structures.

(ii) Surface waters of the state.

(iii) Public and private roads.

(iv) Water well locations.

(v) Characteristics of karst terrain.

(vi) Property boundary line.

(vii) All outfalls of known subsurface drainage structures, including perimeter drain outfalls.

(viii) Drainage inlets, including water and sediment control basins.

(ix) Any residence.



- (B) Any surface water control features, such as berms, used to divert storm water away from the SMSS.
- (C) The SMSS site plan must:
  - (i) be legible and either:
    - (AA) drawn to approximate scale; or
    - (BB) show distances between:
      - (aa) the SMSS; and
      - (bb) features in clause (A) that are within five hundred (500) feet of the proposed SMSS;
  - (ii) contain reference to true north;
  - (iii) indicate any part of the SMSS in a one hundred (100) year flood plain; and
  - (iv) be submitted on paper not less than eight and one-half (8 1/2) inches by eleven (11) inches, but not greater than twenty-four (24) inches by thirty-six (36) inches.
- (4) A SMSS drawing depicting the design, showing detailed views and necessary cross sections to define all dimensions and construction materials.
- (5) Soil and water table information from test holes, as described in [327 IAC 20-5-2\(a\)\(3\)](#), for the proposed SMSS.
- (6) A description of any proposed alternative to a specific requirement in this article to demonstrate equivalent environmental and human health protection.
- (7) A list of potentially affected parties, which includes:
  - (A) the county executive of the county in which the SMSS is to be located or modified; and
  - (B) each owner and each occupant of land of which any part of the boundary is one-half (1/2) mile or less from the property on which the SMSS is to be located.
- (8) Documentation showing compliance with all state and local zoning laws.
- (9) Other plans or supplemental information required by the commissioner to ensure compliance with this article. The commissioner shall provide written documentation of the basis for requiring any other plans or supplemental information.
- (10) A statement affirming that the SMSS shall not be used to store manure from a CFO that is under ownership or control of the applicant.
- (11) Copies of any written waivers related to reduction of setback distances.

(c) Incomplete applications may be denied in accordance with [IC 13-15-4-9](#).

\*United States Department of Agriculture Natural Resources Conservation Service soil survey map may be obtained from Web Soil Survey at: <http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

\*United States Geological Survey topographical map may be obtained from The National Map or US Topo at: <http://nationalmap.gov/> and <http://nationalmap.gov/ustopo/index.html>

(Water Pollution Control Division; [327 IAC 20-4-1](#))

### [327 IAC 20-4-2](#) Duration of permits

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15-7](#); [IC 13-18](#); [IC 13-30](#)

Sec. 2. (a) An initial permit may be issued for a fixed term not to exceed five (5) years. A renewal permit may be issued for a fixed term not to exceed ten (10) years.

(b) In accordance with [IC 13-15-7](#), a permit may be amended, revoked and reissued, or revoked prior to the expiration of the permit term.

(Water Pollution Control Division; [327 IAC 20-4-2](#))

### [327 IAC 20-4-3](#) Permit renewals

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15-4-9](#); [IC 13-18](#); [IC 13-30](#)

Sec. 3. (a) The owner or operator must submit an application for a renewal permit to continue to

operate a regulated a SMSS. The application must:

- (1) be submitted on forms provided by the department;
- (2) contain a current SMSS site plan, as described in section 1(b)(3) of this rule; and
- (3) be submitted at least thirty (30) days prior to the expiration of the previous permit.

(b) The terms and conditions of an expired permit are automatically extended in full force and effect until the effective date of a renewal, if the:

- (1) owner or operator has submitted a complete application for a permit renewal under this article at least thirty (30) days prior to the expiration of the permit; and
- (2) commissioner, through no fault of the owner or operator, does not issue a permit renewal prior to the expiration date of the previous permit.

(c) Incomplete applications may be denied in accordance with [IC 13-15-4-9](#).

(Water Pollution Control Division; [327 IAC 20-4-3](#))

#### [327 IAC 20-4-4](#) Permit modifications

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 4. (a) The commissioner may issue a SMSS permit modification at any time.

(b) Changes to a SMSS requiring a permit modification include the following:

- (1) Changes that increase storage capacity.
- (2) Changes to approved design drawings or construction specifications.
- (3) Any other changes the commissioner determines require a modification.

(c) If the change is not one listed in subsection (b), the owner or operator shall submit to the department:

- (1) a written description of the change; and
- (2) three (3) copies of any documents submitted under section 1 of this rule with revisions reflecting the change.

(d) Fifteen (15) days after submitting a change under subsection (c), an owner or operator may implement the change unless the department provides notification that:

- (1) additional information is necessary to review the change; or
- (2) the change requires a permit modification.

(e) When requesting a permit modification under subsection (b), the owner or operator shall submit three (3) copies of the request to the department including:

- (1) a description of the proposed modification; and
- (2) documents submitted under section 1 of this rule with revisions reflecting the change.

(Water Pollution Control Division; [327 IAC 20-4-4](#))

#### [327 IAC 20-4-5](#) Public comment periods and notifications

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 5. (a) An applicant who applies for a permit to construct or expand a SMSS, or renew a permit for a SMSS that has not begun construction, shall make a reasonable effort to provide notice, not more than ten (10) working days after submitting a complete application, to:

- (1) the county executive of the county in which the SMSS is to be located or modified; and
- (2) each owner and each occupant of land of which any part of the boundary is one-half (1/2) mile or less from the property on which the SMSS is to be located.

- (b) The notice must be completed on forms provided or approved by the department and include:
- (1) the date on which the application was submitted to the department;
  - (2) a brief description of the subject of the application; and
  - (3) the dates comments are to be accepted by the department as described in subsection (c).

(c) The department shall accept written comments for a thirty-three (33) day period following the date of mailing of the notice required under subsection (a) or from the submittal of a complete permit application to the department, whichever is later.

(d) A public meeting on a permit application may be held at the commissioner's discretion where environmental concerns relevant to applicable rules or laws are raised.

(Water Pollution Control Division; [327 IAC 20-4-5](#))

### **[327 IAC 20-4-6](#) Transferability**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 6. (a) When ownership of a SMSS is transferred, the parties completing the transaction shall request transfer of the permit by submitting a written agreement, within ninety (90) days of closing, to the commissioner. The agreement must contain the following:

- (1) An anticipated date for transfer of permit responsibilities.
- (2) Identification of responsibility for any violations existing at the time of the transfer, if applicable.

(b) Failure to comply with subsection (a) shall result in the following:

- (1) Revocation of the existing SMSS permit and possible penalties for operating without a valid permit.
- (2) The new owner or operator shall submit an application for a new permit under this article.

(c) If the transfer is not complete within the time frame described in subsection (a), the new owner may operate under the previous owner's permit until:

- (1) a transfer can be accomplished; or
- (2) the owner is otherwise notified by the commissioner.

(Water Pollution Control Division; [327 IAC 20-4-6](#))

## **Rule 5. Design and Construction**

### **[327 IAC 20-5-1](#) Site restrictions and setbacks**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 1. (a) A SMSS must not be located:

- (1) except as provided in subsection (b), in karst terrain based on information compiled by the department, and from karst and bedrock maps from the Indiana Geological Survey dated 1997;
- (2) in a floodway;
- (3) except as provided in subsection (c), in a one hundred (100) year flood plain;
- (4) over mines; and
- (5) in soil types that are expected to have a seasonable high water table, unless the water table is lowered to keep the water table below the bottom of the SMSS as described in section 2(c) of this rule.

(b) The commissioner may approve a SMSS to be located in karst terrain based upon submittal of the following site-specific information to the commissioner:

- (1) Characterization of the seasonal water table and soil.
- (2) Design and construction specifications that ensure adequate structural integrity and environmental protection.

(3) For an earthen SMSS, in addition to [327 IAC 20-4-1](#), information from at least one (1) of the soil borings or test holes, as described in section 2(a)(3) of this rule, to the shallower of either:

(A) bedrock; or

(B) ten (10) feet below the lowest point of the proposed SMSS.

(4) Other information that the commissioner deems necessary to ensure protection of human health and the environment.

(c) The commissioner may approve a SMSS to be located in a one hundred (100) year flood plain based upon submittal of the following site-specific information to the commissioner:

(1) Characterization of the soil and seasonal high water table.

(2) Design and construction specifications that assure adequate structural integrity and environmental protection to withstand a one hundred (100) year flood event including the following:

(A) For a SMSS for solid manure, the base of the structure is at least two (2) feet above the one hundred (100) year flood elevation.

(B) For a SMSS for liquid manure:

(i) all access to manure storage is at least two (2) feet above the one hundred (100) year flood elevation; and

(ii) the design accounts for hydrostatic pressure on the structure from the seasonal high water table and from flood waters during a one hundred (100) year flood event.

(3) Other information that the commissioner deems necessary to ensure protection of human health and the environment.

(d) A SMSS must be located to maintain the minimum setback distances from the following features that are known and identifiable at the time an application is submitted to the department:

(1) One thousand (1,000) feet from a public water supply well or public water supply surface intake structure.

(2) Three hundred (300) feet from any:

(A) surface water;

(B) drainage inlets, including water and sediment control basins;

(C) sinkholes, as measured from the surficial opening or the lowest point of the feature; or

(D) off-site water wells.

(3) One hundred (100) feet from any:

(A) on-site water wells;

(B) property lines; or

(C) public roads.

(4) Four hundred (400) feet from existing off-site residential and public buildings.

(e) The property line setback distances in this section may be waived in writing by the owner of the adjoining property.

(Water Pollution Control Division; [327 IAC 20-5-1](#))

### **[327 IAC 20-5-2](#) Design requirements**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#); [IC 25-17.6](#)

Sec. 2. (a) A SMSS must be designed:

(1) so the bottom of the SMSS is two (2) feet above bedrock;

(2) above the seasonal high water table, which may be lowered in accordance with subsection (c); and

(3) using test holes to obtain soil and water table information for the design as follows:

(A) The number of test holes must be sufficient to adequately characterize the seasonal water table and soil underneath the SMSS.

(B) Test holes must be:

(i) evenly distributed throughout the SMSS;

(ii) at least two (2) feet below the base of the SMSS for concrete structures in karst and non-karst areas;

(iii) at least five (5) feet below the base of the SMSS for earthen structures in non-karst areas; and

(iv) placed in accordance with section 1(b)(3) of this rule in areas of karst terrain.



**(C) Testing shall be conducted by:**

- (i) a soil scientist registered under the Indiana board of registration for soil scientists;**
- (ii) a professional geologist certified in Indiana under [IC 25-17.6](#); or**
- (iii) a professional engineer registered in Indiana.**

**(b) Plastic, fiberglass, and aboveground steel tanks must:**

- (1) have sufficient strength to withstand design loads;**
- (2) be watertight;**
- (3) be cleaned to remove any traces of previously stored substances prior to addition of manure to the tank if the tank is used to store any objectionable or hazardous substances;**
- (4) be installed to ensure the seasonal high water table is maintained below the tank or the tank must be anchored to prevent flotation; and**
- (5) have protected shut-off valves for all inlet and outlet pipes.**

**(c) Any drainage system to lower the seasonal water table around the base of a SMSS must be designed and installed to:**

- (1) effectively collect and drain the ground water;**
- (2) be of adequate size, proper slopes, and proper distance from the SMSS;**
- (3) if applicable, be provided with:**
  - (A) sumps;**
  - (B) pumps, including a backup pump; and**
  - (C) electricity supply;**
- (4) if applicable, have a surface outlet that is at least fifty (50) feet away from the SMSS, and at least:**
  - (A) fifty (50) feet from the property line in soils with a permeability of one-half (1/2) inch per hour or less; or**
  - (B) twenty (20) feet from the property line in soils with a permeability greater than one-half (1/2) inch per hour;**
- (5) have a shut-off valve or equivalent; and**
- (6) have an access point for sampling within fifty (50) feet of the SMSS.**

**(d) A concrete SMSS must be constructed according to the Indiana NRCS Construction Specification, Concrete Construction, October 2005\* and designed to either of the following design standards:**

- (1) MWPS-36: Rectangular Concrete Manure Storages, Second Edition, 2005\*\*.**
- (2) TR-9: Circular Concrete Manure Tanks, March 1998\*\*.**

**(e) A SMSS must not:**

- (1) have a discharge pipe or conveyance that would allow for a release or discharge of manure or water contaminated by manure; or**
- (2) be an underground steel storage tank.**

**\*This document is incorporated by reference. Copies may be obtained from the Indiana NRCS State Office, 6013 Lakeside Boulevard, Indianapolis, IN 46278 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

**\*\*These documents are incorporated by reference. Copies may be obtained from the MidWest Plan Service, 122 Davidson Hall, Iowa State University, Ames, Iowa 50011-3080 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

*(Water Pollution Control Division; [327 IAC 20-5-2](#))*

**[327 IAC 20-5-3](#) Design requirements for liners**

**Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)**

**Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)**

**Sec. 3. (a) The soil or foundation of an earthen SMSS shall have a maximum specific discharge of**

one-sixteenth (1/16) in<sup>3</sup>/in<sup>2</sup>/day, 1.8x10<sup>-6</sup>cm<sup>3</sup>/cm<sup>2</sup>/sec. This requirement may be satisfied by soil testing that shows a minimum of three (3) feet of in situ soils that:

- (1) meet the maximum specific discharge criteria;
- (2) are over-excavated a minimum of six (6) inches; and
- (3) are recompacted to break up the existing macropore structure.

(b) If there is not at least three (3) feet of in situ soils that meet the maximum specific discharge criteria in subsection (a), a liner must be used. Except for clay liners described in subsection (c), liners used in a SMSS must meet the following design standards as applicable:

- (1) Indiana NRCS Conservation Practice Standard Code 521A: Pond Sealing or Lining, Flexible Membrane, October 2013\*.
- (2) Indiana NRCS Conservation Practice Standard Code 521B: Pond Sealing or Lining, Soil Dispersant, October 2011\*.
- (3) Indiana NRCS Conservation Practice Standard Code 521C: Pond Sealing or Lining, Bentonite Sealant, October 2011\*.

(c) Clay liners shall be a minimum of one (1) foot thick and have a maximum specific discharge of one-sixteenth (1/16) in<sup>3</sup>/in<sup>2</sup>/day, 1.8x10<sup>-6</sup>cm<sup>3</sup>/cm<sup>2</sup>/sec.

\*These documents are incorporated by reference. Copies may be obtained from the Indiana NRCS State Office, 6013 Lakeside Boulevard, Indianapolis, IN 46278 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Water Pollution Control Division; [327 IAC 20-5-3](#))

#### **[327 IAC 20-5-4](#) Solid manure structure design requirements**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 4. In addition to section 2 of this rule, a SMSS that contains solid manure must be designed according to the following:

- (1) The SMSS must:
  - (A) be covered to prevent rainwater from contacting the manure; or
  - (B) have storm water run-on and run-off controls.
- (2) The SMSS must not be constructed in sand or gravel soils, Unified Soil Classification of Pt, GW, GP, GM, GC, SW, SP, SM, as described in ASTM D2488-09a Standard Practice for Description and Identification of Soils (Visual-Manual Procedure)\*, unless specially designed with an approved liner, in accordance with section 3 of this rule.
- (3) Test holes for an earthen SMSS storing solid manure must be placed at a rate of two (2) holes for the first acre of storage and one (1) additional hole for each additional half acre of storage.

\*This document is incorporated by reference. Copies may be obtained from the ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Water Pollution Control Division; [327 IAC 20-5-4](#))

#### **[327 IAC 20-5-5](#) Liquid manure structure design requirements**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 5. (a) In addition to section 2 of this rule, a SMSS that contains liquid manure must be designed according to the Indiana NRCS Conservation Practice Standard Code 313: Waste Storage Structure, September 2005\*.

(b) An uncovered SMSS containing liquid manure must be designed with a minimum freeboard of two (2) feet unless an alternate design is approved by the commissioner.

(c) Test holes for an earthen SMSS storing liquid manure must be placed at a rate of two (2) holes for the first half acre of storage and one (1) additional hole for each additional half acre of storage.

(d) Pipelines must be constructed according to the Indiana NRCS Conservation Practice Standard Code 634: Waste Transfer, October 2010\*.

(e) The SMSS must be certified upon completion by a registered professional engineer on a form provided by the department. The engineer's certification must be kept in the operating record and submitted to IDEM prior to introducing manure.

\*These documents are incorporated by reference. Copies may be obtained from the Indiana NRCS State Office, 6013 Lakeside Boulevard, Indianapolis, IN 46278 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Water Pollution Control Division; [327 IAC 20-5-5](#))

#### [327 IAC 20-5-6](#) Alternative to rule requirements

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 6. (a) An owner or operator may propose and request an alternative to a design, construction, or operational requirement specified in this article, provided the owner or operator can prove to the satisfaction of the commissioner that any alternative will provide equivalent or greater environmental protection than the requirements specified in this article.

(b) Any alternative must be submitted to the department and accompanied by documentation that demonstrates equivalent or greater environmental protection than the standard for which an alternative is being requested.

(c) No alternative may be used prior to approval by the commissioner.

(d) The commissioner shall provide written documentation describing the basis for any determination on an alternatives request.

(Water Pollution Control Division; [327 IAC 20-5-6](#))

#### [327 IAC 20-5-7](#) Construction

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 7. (a) The owner or operator shall notify the commissioner in writing at least two (2) days prior to scheduled construction of a SMSS. Multiple notices, with identification of the parts of the SMSS that are completed at the time of submittal, are required if an owner or operator performs partial construction of an approved structure and plans to utilize that portion prior to completing construction of the entire SMSS.

(b) Any field tiles or drainage outlets encountered during construction must be blocked or rerouted in accordance with any applicable local approval requirements and be cut back at least fifty (50) feet from the edge of any:

(1) berm;

- (2) concrete pit; or
- (3) earthen SMSS.

(c) The applicant shall execute and send to the commissioner a notarized affidavit, under penalty of perjury, that a SMSS was constructed, and shall be operated, in accordance with the requirements of the permit and this article, as follows:

- (1) The affidavit shall be submitted:
  - (A) on a form provided by the department;
  - (B) within thirty (30) days after the date construction is completed; and
  - (C) prior to the introduction of any manure.
- (2) The affidavit shall include identification of the parts of the SMSS that are completed at the time of submittal.
- (3) If an owner or operator performs partial construction of an approved SMSS and plans to utilize that portion prior to completing construction of the entire SMSS, multiple affidavits shall be submitted.

(d) The certification required by section 5(e) of this rule must be completed prior to the introduction of manure.

(Water Pollution Control Division; [327 IAC 20-5-7](#))

## **Rule 6. Maintenance, Operation, and Monitoring**

### **[327 IAC 20-6-1](#) Maintenance requirements**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 1. (a) A SMSS must be maintained and operated to meet the requirements of this article and the permit conditions.

(b) The owner or operator shall inspect the SMSS for compliance with this article and the permit conditions at least one (1) time each month. Any maintenance activities shall be documented in the operating record.

(c) An uncovered SMSS storing liquid manure must:

- (1) be maintained, with a minimum freeboard of two (2) feet, unless otherwise specified in the permit; and
- (2) have clearly identified markers to indicate manure levels relative to the approved freeboard elevation.

(d) An earthen berm for a SMSS must be:

- (1) stabilized with vegetation or alternative erosion control measures;
- (2) maintained to prevent growth of trees and shrubs; and
- (3) maintained to allow for visual inspection.

(Water Pollution Control Division; [327 IAC 20-6-1](#))

### **[327 IAC 20-6-2](#) Operating record**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 2. (a) The owner or operator of a SMSS must keep an operating record that includes the following:

- (1) The complete application.
- (2) The SMSS site plan.
- (3) Notification of construction required by [327 IAC 20-5-7\(a\)](#).
- (4) Notarized affidavit required by [327 IAC 20-5-7\(c\)](#).
- (5) Certification by a registered professional engineer, required by [327 IAC 20-5-5\(e\)](#).



- (6) The current emergency response plan, described in section 3(a) of this rule.
- (7) Documentation of any spill response, described in section 3(b) of this rule, implemented within the permit term.
- (8) Documentation of maintenance activities on the SMSS.
- (9) Copies of any written waivers related to reduction of the setback distances.
- (10) All permits, modifications, renewals, and notifications applicable to the SMSS.

(b) The operating record described in subsection (a) shall be kept on site for the duration of the permit term, except items described in subsection (a)(1), (a)(2), (a)(4), (a)(5), and (a)(9) shall be kept on site for the life of the facility. If the operator is unable to keep the operating record on site, it must be kept at the operator's address listed in the permit.

(c) If the record in subsection (a) is unable to be kept on site to be made available for inspection in accordance with [327 IAC 20-3-2\(b\)\(5\)](#), upon request by the commissioner or an authorized representative, the operator must submit a copy of the record to the department within a reasonable period of time.

(Water Pollution Control Division; [327 IAC 20-6-2](#))

### [327 IAC 20-6-3](#) Emergency response plan

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 3. (a) The owner or operator of a SMSS shall develop an emergency response plan to be kept in the operating record. The plan shall contain the following:

- (1) Procedures for:
  - (A) containing a manure release to prevent it from reaching waters of the state;
  - (B) locating the source of a manure release and stopping the flow of manure;
  - (C) returning released manure to the SMSS or an approved waste management system; and
  - (D) contacting the following:
    - (i) The owner or operator.
    - (ii) Any applicable local emergency or health authorities.
- (2) The names and telephone numbers of persons who are identified by the owner or operator as responsible for implementing the emergency response plan.
- (3) Identification of areas where potential manure releases could occur and their accompanying drainage points.
- (4) Identification of equipment and cleanup materials to be used in the event of a manure release.

(b) The owner or operator must implement the emergency response plan anytime a manure release occurs. If manure from the SMSS reaches waters of the state, the owner or operator must do the following:

- (1) Provide notification in accordance with the following:
  - (A) As soon as possible, but within two (2) hours of discovery, communicate a spill report to the Indiana Department of Environmental Management, Office of Land Quality, Emergency Response Section: (888) 233-7745 or (317) 233-7745.
  - (B) If new or updated spill report information becomes known that indicates a significant increase in the likelihood of damage to the waters of the state, the responsible party shall notify the department as soon as possible, but within two (2) hours of the time the new or updated information becomes known.
- (2) Submit a written copy of the spill report to the Indiana Department of Environmental Management, Office of Land Quality, Emergency Response Section, Indiana Government Center North, Eleventh Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204, if requested by the department.
- (3) Except from modes of transportation other than pipelines, exercise due diligence and document attempts to notify the following:
  - (A) For manure releases or spills to surface water, the nearest affected downstream water user located within ten (10) miles of the spill and in the state of Indiana.
  - (B) For manure releases or spills to soil outside the SMSS property boundary, the affected property owner or owners, operator or operators, or occupant or occupants.

(Water Pollution Control Division; [327 IAC 20-6-3](#))

## Rule 7. Exiting the Satellite Manure Storage Structure Program

### [327 IAC 20-7-1](#) Exiting the program but continuing to operate

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 1. (a) A SMSS may be removed from the SMSS permitting program, but continue to operate if the department has received and approved a request from the owner or operator to be removed from the program. The request must include confirmation that the SMSS:

- (1) no longer meets the definition of an SMSS under this article; or
- (2) shall be operated under another regulatory program, if applicable.

(b) The commissioner shall send the owner or operator a letter of confirmation when the department has verified that the requirements of subsection (a) have been met.

(c) For a SMSS that has been removed from the SMSS permitting program under subsection (a), the owner or operator must submit a new application under this article prior to operating a new SMSS.

(*Water Pollution Control Division*; [327 IAC 20-7-1](#))

### [327 IAC 20-7-2](#) Decommissioning a satellite manure storage structure

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

Sec. 2. (a) The owner or operator of a SMSS that plans to decommission a SMSS shall do the following:

- (1) Continue to maintain the SMSS in accordance with the requirements of this article until the manure is removed.
- (2) Follow the requirements in the Indiana NRCS Conservation Practice Standard Code 360, Closure of Waste Impoundments, November 2012\*, if applicable.
- (3) Have all associated appurtenances and conveyance structures removed from uncovered manure storage facilities.
- (4) Notify the department:
  - (A) before demolishing or converting the use of any SMSS; and
  - (B) of the intended future use of the SMSS, if the SMSS is to be converted to another use.

(b) The owner or operator shall submit a certification to the commissioner within thirty (30) days after completing the requirements in this section that certifies compliance with the requirements in this section.

(c) If deemed necessary to protect human health or the environment, the commissioner may require additional decommissioning activities based on:

- (1) surface or ground water contamination;
- (2) evidence of:
  - (A) leakage;
  - (B) seepage;
  - (C) manure releases; or
  - (D) spills; or
- (3) other criteria related to protection of human health or the environment.

(d) The commissioner shall provide written documentation describing the basis for any required additional activities.

\*This document is incorporated by reference. Copies may be obtained from the Indiana NRCS State

Office, 6013 Lakeside Boulevard, Indianapolis, IN 46278 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Water Pollution Control Division; [327 IAC 20-7-2](#))

### **[327 IAC 20-7-3](#) Closing a SMSS and exiting the program**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-18-10.5](#)

Affected: [IC 13-11-2](#); [IC 13-14](#); [IC 13-15](#); [IC 13-18](#); [IC 13-30](#)

**Sec. 3. (a) A SMSS may be removed from the SMSS permit program and completely closed if the owner or operator has notified the department that the SMSS has been decommissioned in accordance with this rule, including the removal of all manure and completion of all additional decommissioning activities required under section 2 of this rule.**

**(b) A SMSS shall not be considered removed from the SMSS program until all manure in the SMSS has been managed:**

- (1) as fertilizer in accordance with [355 IAC 8](#); or**
- (2) in accordance with other applicable state and federal laws.**

**(c) The commissioner shall send the owner or operator a letter of confirmation when the department has verified that the requirements of subsections (a) and (b) have been met.**

(Water Pollution Control Division; [327 IAC 20-7-3](#))

### **[Notice of Public Hearing](#)**

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